

**REMARKS**

In this Amendment, claims 1, 4, 5, 7, 27, 31, and 32 are currently amended. Claims 1, 2, 4-7, and 25-32 remain pending in this application. Claims 1, 2, 4-7, and 25-32 remain pending after entry of this Amendment. No new matter is introduced by this Amendment. The claim amendments are supported by the specification as originally filed (for example, at portions of the specification corresponding to FIGS. 2B, 3A and 3B and paragraph 27 of Publication No. 2004/0060508).

**Claim Rejections Under 35 U.S.C. § 102**

Claims 1 and 4-6 were rejected under 35 U.S.C. § 102(b) as being anticipated by Kachigian (U.S. Patent No. 5,084,005).

Claim 1 has been amended to recite a “second member having a stent support surface facing the stent support surface of the first member.” Kachigian fails to teach these elements of claim 1. Accordingly, Applicant respectfully submits that claim 1 is patentably allowable over Kachigian.

Claims 4-6 depend from claim 1 and are patentably allowable over Kachigian for at least the same reason as claim 1 is patentably allowable.

Further, claim 4 has been amended to recite that the “stent support surface of the first member is made from a metallic material.” Kachigian fails to teach this limitation of claim 4. Kachigian fails to teach that the surface of the swabbing tip 32 in which the grooves 34 are formed are made from a metallic material. For this additional reason, Applicant respectfully submits that claim 4 is patentably allowable over Kachigian.

Claim Rejections Under 35 U.S.C. § 103

## I.

Claims 2 and 25 were rejected under 35 U.S.C. § 103 as being unpatentable over Kachigian.

Claim 2 recites that “the pores have a diameter of about 0.2 microns to about 50 microns.” Kachigian teaches away from this limitation. The Examiner refers to the previous office action in which the Examiner stated that “because the Kachigian swab is useful for collecting samples of microorganisms (col. 1, lines 15+, said microorganism being micron sized, it would have been within the purview of one skilled in the art to provide a member with a pore diameter in the range of the instantly claimed invention.” However, **reducing the size of the grooves 34 to a size from about 0.2 to about 50 microns as proposed by the Examiner would effectively eliminate the “surface discontinuity” described in Kachigian.** According to Kachigian, surface continuities on the swabbing tip 32 are needed for efficient gathering of the biological sample from a subject (see Kachigian col. 4, lines 18-20 and 30-34) and to facilitate removing the biological sample from the swabbing tip without having to use an aqueous extraction reagent (see col. 5, lines 11-20). Accordingly, Applicant respectfully submits that claim 2 is patentably allowable over Kachigian.

Claim 25 depends from claim 4, which has been amended. As indicated above, claim 4 is patentably allowable over Kachigian. Applicant respectfully submits that claim 25 is patentably allowable for at least the same reason as claim 4.

## II.

Claims 1, 2, 4-7, 25, and 26 have been rejected under 35 U.S.C. § 103 as being unpatentable over Jendersee et al. (U.S. Patent Number 5,836,965) in view of Helfrich (U.S.

Patent No. 5,308,338), and Scanlon et al. (U.S. Patent No. 2,845,346). Applicant respectfully disagrees.

Claim 1 recites “the pores having an open end and a closed end so as to provide a closed pore system on the surface of the member.” The Examiner refers to the previous office action in which the Examiner stated that Jendersee et al. are “silent concerning the retaining members having a porosity to the extent of a closed pore system,” but that it was known in the art “to provide a catheter with cuffs made from porous implantable materials from polymers to sintered metal and ceramics as evidenced by Helfrich” and that it “was further known in the sintered metal art, to enable sintered metal bodies to be made of a closed pore construction as evidenced by Scanlon et al.” In the present office action, the Examiner states that Scanlon et al. “does not explicitly state the sintered metal bodies being of closed pore construction but implicitly provides for a metal body being porous in some areas or of a different porosity or having no porosity with the later encompassing a closed pore construction.” **The Examiner has erroneously equated the metal body having “no porosity” in Scanlon with the “closed pore” limitation of claim 1.** Scanlon states that the “pores of the bodies are interconnected” after sintering (col. 2, line 53). The instant application describes such a structure as an “open pore system,” which is patentably distinct from a “closed pore system” in which pores are isolated from one another (see Pub. 2004/0060508, para. 30). In Scanlon, a body having “no porosity” (col. 1, line 21) refers to a processes by which the interconnected pores of a sintered body are infiltrated by a molten metal, such as copper (col. 2, line 53 to col. 3, line 28). **There is no teaching or suggestion in Scanlon that such a body, having been infiltrated by molten metal, includes pores “having an open end and a closed end so as to provide a closed pore system on the surface,” as required by claim 1.** Accordingly, Applicant respectfully submits that claim 1 is patentably allowable over Jendersee et al. in view of Helfrich and Scanlon et al.

Claim 2 recites that “the pores have a diameter of about 0.2 microns to about 50 microns.” There is no disclosure or suggestion in Jendersee et al., Helfrich, or Scanlon et al. of the claimed pore diameters. Accordingly, Applicant submits that claim 2 is patentably allowable over Jendersee et al. in view of Helfrich and Scanlon et al.

Claims 4-7, 25, and 26 depend directly or indirectly from claim 1 and are patentably allowable over Jendersee et al. in view of Helfrich and Scanlon et al. for at least the same reason as claim 1. Applicant disagrees with the Examiner’s assertion that use of the materials recited in claims 25 and 26 are a matter of obvious design choice.

### III.

Claims 27-32 have been rejected under 35 U.S.C. § 103 as being unpatentable over Jendersee et al. in view of Helfrich.

Independent claims 27, 31, and 32 have been amended to recite “the first and second elements capable of being moved closer or further from each other.” Jendersee et al. and Helfrich, alone and in combination, fail to teach or suggest this limitation. Accordingly, claims 27, 31, and 32 are patentably allowable over Jendersee et al. in view of Helfrich.

Claims 28-30 depend from claim 27 and are patentably allowable over Jendersee et al. in view of Helfrich for at least the same reason as claim 27.

Further, claim 28 requires that “the layer is a sponge.” Jendersee et al. and Helfrich, alone and in combination, fail to teach or suggest this limitation. For this additional reason, claim 28 is patentably allowable over Jendersee et al. in view of Helfrich.

Also, claim 30 requires that “the first and/or second element has a conical shape.” Jendersee et al. and Helfrich, alone and in combination, fail to teach or suggest this limitation. For this additional reason, claim 30 is patentably allowable over Jendersee et al. in view of Helfrich.

IV.

Claims 1, 2, 4-6, and 25-32 have been rejected under 35 U.S.C. § 103 as being unpatentable over Frisch (U.S. Patent No. 4,906,423). Applicant respectfully disagrees but has amended claim 1 to expedite prosecution.

As indicated previously, claim 1 has been amended to recite “second member having a stent support surface facing the stent support surface of the first member.” Frisch fails to teach or suggest this limitation. Accordingly, Applicant respectfully submits that claim 1 is patentably allowable over Frisch.

Claims 2, 4-6, 25, and 26 depend from claim 1 and are patentably allowable over Frisch for at least the same reason as claim 1. Further, Frisch fails to teach or suggest the limitation of claim 4 that “the stent support surface of the first member is made from a metallic material.” For this additional reason, Applicant respectfully submits that claim 4 is patentably allowable over Frisch.

As indicated above, independent claims 27, 31, and 32 have been amended to recite “the first and second elements capable of being moved closer or further from each other.” Frisch fails to teach or suggest this limitation. Accordingly, Applicant respectfully submits that claims 27, 31, 32, and the claims depending therefrom, are patentably allowable over Frisch.


Conclusion

In light of the foregoing remarks and amendments, this application is considered to be in condition for allowance, and early passage of this case to issue is respectfully requested.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 07-1850.

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Respectfully submitted,

  
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